O/Cement/53

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File No. 37/53

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Legal Debt.

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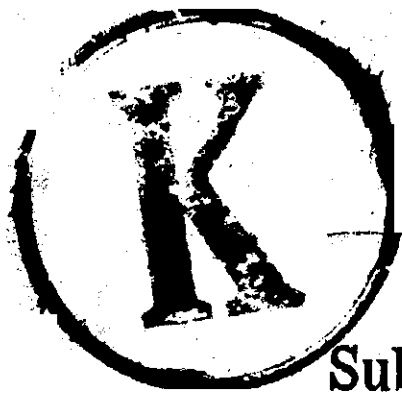

Subject.—

Opinion on the

Cement Matter

File No. O / Cement / 53

Gen. 194 e.

39/53

C O N T E N T S

Legal Department File No. O Cement/53(G-37)

Sr. No.	R. I. / O. No.	Subject	Pages.
		Opinions on the Cement Matters.	
1-	G-84/6-2-53	Re: Application for Cement permit. Prosecution for breach of any of the conditions of the Application.	1-8-
2.	G-546/10-9-53	Re: Prosecution for breach of Certain orders issued by Govt. in respect of stock and Disposal of Cement.	9-14

Mjr/16/8/
5 Cs.

Submitted.

2. Please see the office notes of the D.D on pages 7-9 and 11-13 ante. 30th of Sept. 1952 being a holiday the case could not be submitted on 1-10-52 as ordered by the A.S. (G).

3. The facts of this case, in short, are as follows :-

A complaint was made by Shri Alfred Jacob, ex-Civil Engineer of M/s. Godavari Sugar Mills Ltd., Sunnapwadi and Laximiwadi in the name of A.D. Diwakar to the Director of Industries, Bombay on 16-5-1951 alleging that Shri K. J. Somayya, the Managing Agent of the said Mills had utilized about 910 bags of cement for construction of his own sugar candy factory at Bharatwadi from the allotment made by Govt. to the Mills Shri Alfred Jacob forwarded with his complaint five photo copies of indents of the Mills which showed that during the months of January, February, March and April of 1951, 210 bags 400 bags, 200 bags and 100 bags of cement respectively had been indented for the Bharatwadi Buildings from the construction Department of the Mills. Shri Shantilal Karamsi, the son of Shri Somayya had applied to the Director of Industries on 10-2-51 for his requirements of cement for the proposed construction of the sugar candy factory building at Bharatwadi. He was, however, informed by the Director of Industries that unless he produced plans approved by the Factory Inspector, his application could not be considered. The Director of Industries forwarded the complaint of Shri Alfred Jacob to the Assistant Director of Industries, Poona for making necessary inquiries in the matter. The Assistant Director of Industries reported after making inquiries that before getting approval of the plans for construction of the sugar candy factory at Bharatwadi by the Factory Inspector

one third of the constiuction had been completed with lime mortor and a part of the cement sanctioned for M/s. Godavari Sugar Mills Ltd and that the cement diverted from the Mills to the sugar candy factory was to be replenished on receipt of quota for II/1951. The Asstt. Dir. of Industries requested that as the accounts of the mills were maintained by their managing agent, Shri Sommayya at Bombay, the C.I.P. should be required to go into the complaint and find out if black marketting of cement had taken place between the two sister concerns. As per the above request the Dev., Deptt. asked the Dy. I.G.P., C.I.D. , Bombay to investigate the matter. Shri Sommaiya stated to the Investigating Officer deputed by the Dy. I.G.P. that he had commenced the work of construction of his sugar candy factory with the imported cement and not with the cement allotted to M/s. Godavari Sugar Mills. Inquiries made by the Investigating Officer revealed that the Regional Honarary Cement Adviser, Bombay had in all released 401 and tons of cement from time to time during 1950 anut of which 295 tons of cement remained inbalance on 1-6-51; that as seen from record of the mills, plenty of building material, labour and services of techinicions and servants of the mills were used in the construction of the sugar candy factory which according to Shri Sommaiya were taken on loan from the Mills and were to be adjusted at any time, that no ovidence for criminal misappropriation of the mills material can be collected as Shri Sommayya and his son are in the managing agent and the Director of the mills respectively, and the other Directors of the mills are also their near relatives, that Shri Sommayya learning that some inquiry was going on against him, replenished the stock of cement of the mills by purchasing 1025 bags and 400 bags of imported cement from Shelapur and Ahmedabad respectively;

and that although the cement obtained by the mills from Govt. was used by them in the construction of the sugar candy factory still sale of cement from the mills to the factory could not be established as there was no record maintained by the mills in that respect. The D. D. thinks that by using the cement allotted by Govt. under the permit to the mills for the purpose other than the one for which cement was indented by them the mills have contravened condition (1) of the application for the permit under condition (2) of the application for the permit <u>any breach of the condition by the applicant amounts to mis-representation and obtaining cement by false pretences</u> for which in addition to any other action all further or other supplies are to be immediately cancelled or stopped. As per this condition further cement supplies of the mills have been cancelled by the D.D. Now these papers have been forwarded to this office by that Deptt. for R.L.A 's opinion whether any legal action can lie against the mills in view of the underlined words in condition (2) of the application for the permit.

The view taken by the Deputy Inspector General of C. I. D. at X on page 45/C is correct. Clause 2 of the Political and Services Department Order No. 986/46, dated the 24th July 1947 issued under section 4 of the Bombay Essential Commodities & Cattle (Control) Act, 1946, provides that no person shall sell cement unless authorised in writing to do so by the officers mentioned in the said clause. In this case the offence was brought to the notice of the Director of Industries, Bombay by one A. D. Diwakar who has even supplied five photo zinco copies of the indents. The Managing Agents have contended that Shri Alfred Jacob, the dismissed Civil Engineer of the Mills has manoeuvered to send this pseudonymous application and photo-zinco copies of cement indents to Government. The Police it seems made enquiries about Shri Alfred Jacob and learnt that he was serving at Ernakulum. The report of the Deputy Inspector General of Police is silent on the point whether Shri Alfred could throw any light on this and it seems that he could not be contacted by the Police. Even if the indents were true, the contention of the Managing Agents was that cement was taken on loan and the stocks were subsequently replenished with imported cement. There is therefore no evedence to prove sale of cement and prosecution for breach of clause 2 of the Political and Services Department Order No. 986/46, dated the 24th July 1947 is not feasible.

The next question that arises for consideration is whether any legal action would lie for breach of conditions in the application for cement and in the authorisation to get supply from the cement factory or company. The forms are at pages 219-221/C. The condition is that quantity supplied must be used for the purpose mentioned in the application or authorisation and that no part of it shall be used for any other work or given, transferred or sold to any other party or transported from the town where it is supplied to any other place. The distribution of cement by the Regional Hon. Cement Adviser is

not under any statutory orders." No prosecution can therefore lie for breach of the condition of the application for permit and authorization.

Even as regards prosecution for cheating, it would not be possible to prove intention to deceive at the very inception viz. when cement was obtained by the mills

Sd/P.M.LAD.
6/2

Remembrancer of Legal Affairs.

U.R. to D.D. No. G-84, dated the 6th February 1953.

Ver. 10-6-50.

Submitted.

2. Please see the office note of the P.W.D. on page 3 ante.

3. The facts of this case, in short, are as follows :-

Bombay Government by their circular Memorandum No. 988/46/12708-E, dated 21-5-1952 allowed issue of cement upto five bags to a family by a stockist subject to the maximum of 10 percent of the total stock received by him. A copy of the above memorandum was sent to Messrs. Cement Marketing Company of India Ltd., Ahmedabad who by their circular dated 16-6.1952 informed their stockists as follows:-

"(1) Free sale of cement by the stokist is permitted upto 10 percent of the stock received by him. That much quantity should therefore be reserved for free sale.

(2) Stockist is authorised to sell cement without permit upto five bags per family per month."

The General Store, Devgad Baria who is stockist Messrs. Cement Marketing Company sold 373 cement bags out of 430 bags received by it for non.agri cultural purposes in contravention of the Government orders contained in the circular memorandum dated 21-5-52. When asked to explain the store has stated that he thought that para 2 of the cement Marketing Company's Circular dated 16-6-52). was independent of para 1 thereof. The explanation of the store was considered to be unsatisfactory. The case was therefore referred to the police for launching prosecution against the store for contravention of the Government Circular memorandum dated 21-5-52. The police, however,

wanted to know the law under which the prosecution was to be launched. The District Government Pleader, Panch Mahals was therefore consulted as to whether the circular memo. dated 21-5-52 could be deemed to be an order issued under section 4 of the Bombay Essential Commodities and Cattle (Control) Act, 1946. The District Government Pleader, opined as follows:-

"If the Government Circular memorandum dated 21-5-52 had been intended to be an order under section 4 of the Bombay Essential Commodities and Cattle (Control) Act, 1946, it would have been published in official Gazette under section 6(1)(a) of the said Act. It is true that under section 6(2), the validity of the order cannot be affected due to failure to publish it in the Gazette. But the order must have been made under section 4 of the Act in order to make contravention thereof punishable under section 10. There is nothing in the circular memo. to show that it was made under section 4 of the Bombay Essential Commodities and Cattle (Control) Act, 1946. Therefore the fact that the Circular Memo. was not published in the Official Gazette would induce the court to hold that Government did not intend to issue the circular memo. as an order under section 4 but that it was intended to be a departmental order only."

The P.W.D. has asked the Cement Marketing Company to take departmental action against the store. The store has been strictly warned by the Company. The P.W.D. has now referred these papers to this office for opinion.

(1) Whether the view taken by the D.G.P.Panch Mahals is correct, and

(2) Whether the Government orders contained in the Circular Memo. dated 21-5-52 should be made statutory by issuing them in the Official Gazette.

This Department is requested to advise.-

(i) Whether the view taken by the District Government Pleader, that the case is not a fit one for prosecution, is correct.

(ii) Whether the order issued by the Secretary, Labour and Housing Department, dated the 21st May 1952 can how be regularized (i.e. Gazetted) and made statutory.

The court is not likely to hold the order dated the 21st May 1952 as statutory. The view taken by the District Govt. Pleader, Panch Mahals is therefore correct. There is, however no objection to issue a statutory order now but it cannot be given retrospective effect.

Sd/

Secretary to Government.

U.O. to P.W.D. No. C-546, dated the 10th September 1953.

Dep. 16-8-53.